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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/603,812 06/26/00 KRAUS

M 39732/DBP/E4

EXAMINER

QM32/0802

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BIRD, J	ART UNIT	PAPER NUMBER
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3762
DATE MAILED:

08/02/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/603,812

Applicant(s)

KRAUS ET AL.

Examiner

John M. Bird

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

2. The contents of Figs. 1-10 should include a labeled representation (a text labeled rectangular box) according to 37 CFR 1.83(a).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 2-8, "An implant" is vague because it is unclear whether this is the same implant as in claim 1 (it is suggested to use --The implant--).

In claims 1-8, "characterized in that" is vague because it is unclear how this phrase limits the claims (it is suggested to

In claim 1, "in particular a cardiac pacemaker" is vague because it is a range within a range rendering the scope of claim coverage indefinite (it is suggested to claim only one of the ranges); "which includes" renders the claim vague because it is unclear whether this is an open or closed transition, and it is unclear whether the structures that follow limit the telemetry device or the external apparatus (it is suggested to use --wherein the telemetry device comprises-- if

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appropriate; it is unclear if "an external apparatus" is meant to be inferentially included as a structure of the claimed implant or merely meant to be part of the functional limitation (it is suggested to positively recite that the apparatus is a structure of the implant if it is the structure that is later limited); "a separate energy storage means (56,57) is respectively provided for" is vague because it is unclear whether this is a functional or structural limitation (it is suggested to use a phrase, such as --wherein each of the transmitting device (54) and the receiving device (55) is connected to a separate energy storage means (56,57)-- if it is a structural limitation).

In claim 2, "include" is vague because it is unclear whether this is an open or closed transition (it is suggested to use --comprise--).

In claims 3-5, "the buffer capacitors" lacks antecedent basis.

In claim 3, "include" is vague because it is unclear whether this is an open or closed transition (it is suggested to use --comprise--); and with respect to claim 3/2, "a buffer capacitor of different sizes" is vague because it is unclear if these are the same buffer capacitors that are recited in claim 2.

In claims 4 and 8, "can be" is vague because it is unclear if the phrases after this are intended to limit the claim (it is suggested to use --are--).

In claim 8, "energy storage means (54)" is vague because it is unclear if this is the same

In claim 5, the claim is indefinite because as written, it can be interpreted as limiting the claim so that the capacitors are both charged up prior to either a transmission or a reception, or that they are individually charged prior to a transmission or reception (it is suggested to recite specifically which capacitor is charged up before the respective procedure).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4, and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Fryer (4,186,749). Fryer discloses an implantable monitor with a transmitter coil 24 with a buffer capacitor 83, and a receiver 16 with a buffer capacitor 66, which are different sizes (Fig. 2 and col. 5, lines 29-65). With respect to claim 4, the transmission buffer capacitors can be charged charged up individually. With respect to claim 6-7, it is inherent that a buffer capacitor is a reserve energy storage means. With respect to claim 8, the capacitors are connected in parallel. The elements of the claims are met by the reference.

Allowable Subject Matter

7. No claims are indicated as allowable because of numerous §112-2 errors. The claims are full of vague and indefinite language and may still be finally rejected in view of previously cited prior art or new art not of record, or rejected under §112-1 and §112-2.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John M. Bird whose telephone number is (703) 605-4354. The examiner can normally be reached on Monday - Friday 9:00 AM -5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

JMB

JMB
July 27, 2001

✓ *U*

GEORGE R. EVANISKO
PRIMARY EXAMINER

7/27/11

Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.